IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

ST.Rev..No. 113 of 2007

TA.402/2005 of S.T.A.TRIBUNAL,ADDL.BENCH,PALAKKAD
.....

REVISION PETITIONER/APPELLANT:

C.U.DEVASSY,
CHOONDAKKATTIL TRADERS,
PUDUKKAD,THRISSUR.

BY ADVS. SRI.ARIKKAT VIJAYAN MENON,
SRI.HARISANKAR V. MENON,
SMT.MEERA V.MENON &
SRI.MAHESH V.MENON

RESPONDENT/RESPONDENT:

STATE OF KERALA.

BY SPL. GOVT. PLEADER SRI. VINOD CHANDRAN.

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 10/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L. DATTU, CJ. & K.M. JOSEPH, J.

- -

S.T.Rev. No.113 of 2007

- -

Dated this the 10th day of December, 2007.

ORDER

H.L.DATTU, CJ,

This revision petition is filed by a dealer registered under the provisions of the Kerala General Sales Act ('KGST Act' for short), being aggrieved by the orders passed by the Sales Tax Appellate Tribunal in T.A. 402 of 2005 dated 17.5.2006.

2. The facts in brief are:-

The petitioner is a dealer registered under the KGST Act. It is engaged in the trading of grocery etc., in Pudukkad in Thrissur District. For the assessment year 2001-2002, the assessee had filed his annual return and in that had conceded certain total and taxable turnovers.

3. The assessing authority being of the opinion that the return so filed by the assessee is incorrect and incomplete has proceeded to issue the pre-assessment notice. In the notice, it was brought to the notice of the assessee that the petitioner has suppressed the inter-State purchase of Gingily oil. Based on the aforesaid omission, the assessing authority had issued pre-assessment notice to the petitioner, inter alia directing the petitioner to show cause why the proposal made in the pre-assessment notice should not be confirmed.

4. After the receipt of the pre-assessment notice, petitioner had filed his detailed reply, in which, he had denied the assertions and accusations made by the assessing authority in the pre-assessment notice issued.

5. The assessing authority, not being satisfied with the explanation so offered by the assessee, has proceeded to confirm the proposal made by him and thereby has completed the assessment for the assessment year 2001-2002. In that it has made an addition of Rs. Two Lakhs to the conceded turnover. In the assessment order, the assessing authority has specifically stated that the assessee has suppressed the purchases of gingily oil made by way of inter-State purchase. This finding of the assessing authority is based on the materials available on the record.

6. Aggrieved by the orders of assessment passed by the assessing authority, the assessee has filed first appeal before the appellate authority. In the appeal, the appellate authority has confirmed the view of the assessing authority.

7. Aggrieved by these two orders, the assessee had preferred appeal before the Sales Tax Appellate Tribunal in T.A. No.402 of 2005. The Tribunal, by its order dated 17th May, 2006, while confirming the order of the assessing authority, has reduced the addition made by the assessing authority from Rs.Two Lakhs to Rs. One Lakh, and accordingly has directed the assessing authority to re-compute the tax liability and issue a fresh demand notice. The findings and the conclusion reached by the Tribunal is as under:-

> *"I have examined the contentions of both parties with respect to the arguments putforth. Considering the nature of defects pointed out by the assessing authority the rejection of accounts is justified. The assessing authority had established*

purchase suppression in gingily oil purchased from outside the State. Considering the materials on record the addition proposed by the assessing authority is found to be in excess. To meet the ends of justice the addition of Rs.2,00,000.00 is reduced to Rs.1,00,000.00. All other additions are sustained. The assessing authority is directed to modify the assessment order as stated supra. Ordered accordingly.".

8. Aggrieved by the order passed by the Tribunal, the assessee is before us in this Tax Revision.

9. The assessee has framed the following questions of law for our consideration and decision. They are as under:

"A. *Whether on the facts and in the circumstances of the case, has not the Appellate Tribunal gone wrong in failing to consider Annexure F purchase ledger wherein all the purchases referred to in the assessment order are accounted*?

B. *Is not the estimation of turnover sustained by the tribunal illegal and arbitrary*?"

10. Smt. Meera V. Menon, learned counsel appearing for the assessee would submit that the assessing authority was not justified in coming to the conclusion that the assessee has in fact suppressed the Gingily oil purchased from outside the State and therefore submits that the assessing authority was not justified in rejecting the return filed by the assessee and then completing the best judgment assessment by making additions to the conceded

turnover.

11. We have carefully perused the order of assessment passed by the assessing authority. In the assessment order so passed, the assessing authority has stated that though the assessee has purchased Gingily oil from outside the State, has not made available the details of purchase and sale and therefore there is suppression of purchase and sale of Gingily oil. Having come to that conclusion, the assessing authority has made an addition of Rs.Two Lakhs to the conceded turnover.

12. The finding of the assessing authority is purely based on the books of accounts and other documents produced by the assessee at the time of completion of the assessment proceedings.

13. The Tribunal, once again relying upon the findings of the assessing authority, which is a finding of fact, has come to the conclusion that the assessing authority has not committed any error while completing the best judgment assessment. However, being of the opinion that the assessing authority was not fully justified in making an addition of Rs.Two Lakhs to the conceded turnover, and in the ends of justice, has reduced the same to Rs.One Lakh. The finding of the Tribunal is purely a finding on fact and the same cannot be interfered by this court under Section 41 of the KGST Act, for the reason, that the parameters of the revisional jurisdiction of this court is limited. This court in exercise of the powers under Section 41 of the KGST Act, can entertain a revision petition if the Tribunal has failed to decide or has erroneously decided a question of law. In this case, we have already noticed

that the finding of the Tribunal is purely based on facts and therefore this revision filed under Section 41 of the Act cannot be entertained by us. Accordingly, while rejecting the revision, we confirm the order passed by the Tribunal.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE

K.M. JOSEPH,
JUDGE

sb.